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DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-198761

DATE: December 23, 1981

MATTER OF: Eugene R. Platt - Reconsideration -
Relocation Expenses - Merit Promotion
Transfer

DIGEST:

1. Eugene R. Platt, 59 Comp. Gen. 699 (1980), held that when an agency issues a vacancy announcement under its Merit Promotion Program such action is a recruitment action and when an employee transfers pursuant to such action the transfer should normally be regarded as being in the interest of the Government in the absence of agency regulations to the contrary. The Commission on Civil Rights requested a review of this decision. On reconsideration, we affirm Eugene R. Platt. The Commission did not have regulations on this subject and the job vacancy announcement was unrestricted as to reimbursement, contained no limitations on geographic area of consideration, and did not differentiate between Commission employees and others as to entitlements.
2. Eugene R. Platt, 59 Comp. Gen. 699 (1980) was silent on the question of how agencies may effectuate a policy as to when to authorize reimbursement of relocation expenses pursuant to merit promotion transfers. However, our decision does not preclude the General Services Administration, the Office of Personnel Management, or the employing agency from issuing regulations on relocation expenses and merit promotions stating conditions and factors to be considered in determining whether a transfer is in the interest of the Government. Payment of relocation expenses need not automatically be tied to the existence of a vacancy announcement issued pursuant to a Merit Promotion Program.

This decision involves a reconsideration of Eugene R. Platt, B-198761, September 2, 1980, (59 Comp. Gen. 699). There, the United States Commission on Civil Rights had posted a vacancy announcement for an editor-writer pursuant to its merit promotion plan. Mr. Eugene R. Platt, then an employee of the Department of the Interior in New Orleans, Louisiana, applied for the position, and was later selected. The agency's offer of employment to Mr. Platt specified that he would not be reimbursed for relocation costs. Mr. Platt accepted with no qualifications or conditions. He reported for duty in Washington, D.C., having traveled from New Orleans at his own expense and without travel orders. He subsequently filed a claim for relocation expenses.

In essence, we held that when an agency issues an announcement of an opening under a merit promotion program that such action is a recruitment action. When an employee transfers pursuant to such a recruitment action the agency will normally regard such transfer as being in the interest of the Government. We found that the fact that an employee seeks the position as a result of a vacancy announcement is not in itself a proper basis to conclude that the transfer is primarily for the convenience of the employee. The decision also re-affirmed our previous position that budget constraints alone do not justify the denial of relocation expenses on transfers in the interest of the Government. We concluded by requesting the Commission on Civil Rights to make a new determination in the case, taking cognizance of our view that, in the absence of some other basis than theretofore advanced by the Commission, the appropriate determination under the facts of the case should be that the transfer was in the interest of the Government.

REQUEST FOR RECONSIDERATION

The United States Commission on Civil Rights has requested us to reconsider our decision. The Commission bases its request for reconsideration on several grounds. It questions whether it is realistic, in view of current personnel practices, to define every merit promotion announcement as a "recruitment" for the purposes of reimbursement of relocation expenses. The Commission notes that merit promotion is the most common method

of announcing job vacancies and that in fact all positions within its employee union bargaining unit are subject to its Merit Promotion Program. Further, the Commission says its announcements are disseminated by commercial services resulting in announcements reaching thousands of persons, and often result in hundreds of applications. The Commission maintains that it would be unrealistic to conclude that the initiating agency should be held to have recruited all these resulting applicants.

The Commission points out that contractual agreements between agencies and unions may contain provisions, similar to its own, that require all filling of vacancies within the bargaining unit to be processed under the agency's merit promotion procedures.

The Commission urges that Platt be modified to allow the Government to consider all of the relevant factors involved in employee selection, including budget constraints, labor market conditions, and grade and skill level of the applicants in determining whether the selection of an individual is, in fact, in the best interest of the Government for purpose of paying relocation costs.

The Commission recognizes that in our decision David C. Goodyear, 56 Comp. Gen. 709 (1977), we held that budget constraints cannot form the basis for denying expenses if a transfer has been found to be in the Government's interest. However, it suggests that the implementation of that decision may have unsound results because the budgetary implications are clearly more adverse for small agencies than for the Department of the Navy, the agency involved in the Goodyear case.

In conclusion, the Commission predicts that the combined impact of Platt and Goodyear will be to force agencies to consider nonmerit related factors before issuing vacancy announcements which will result in a larger proportion of geographically restricted vacancy announcements. Such limitations will result in a smaller labor pool, which will reduce the agencies access to a broader range of qualified candidates. Alternatively, the Commission believes that agencies will have to consider the geographical location of all

applicants as a factor in the selection process, even though the Commission feels that would be contrary to merit principles and the Civil Service Reform Act of 1978.

We have solicited the views of both the Office of Personnel Management and the General Services Administration in response to the Commission's request for reconsideration and have carefully considered their comments.

VIEWS OF OFFICE OF PERSONNEL MANAGEMENT

The Office of Personnel Management (OPM) provided our Office with a memorandum which states that "[t]he main problem with the Platt decision is that it ties payment of relocation expenses to the existence of a merit promotion vacancy announcement and thus takes away all of an agency's discretion in such cases." The OPM reports that it has reviewed agency reaction to the Platt decision and found that of the agencies that have problems with the decision for what OPM considers sound reasons, those "reasons were directed at the fact that because of union agreements and other reasons, selections are increasingly being made under merit promotion procedures even when the move is in reality at the request and for the convenience of the employee." In light of these concerns, OPM indicates that it would prefer an amended decision that would leave an agency some discretion in determining whether a merit promotion transfer is primarily in the interest of the Government based on the totality of factors in each case.

The OPM states that there may be employment situations in which it would not be in the interest of the Government to pay relocation expenses even though the selection was made pursuant to merit promotion procedures. For example, if the local labor market could produce sufficient qualified candidates, yet someone from another geographic location wants the job and is willing to pay relocation expenses, the option to hire that candidate without incurring an obligation to reimburse relocation expenses should be available. Similarly, if an employee is primarily motivated to transfer in order to accompany a spouse across country, payment of relocation expenses might not necessarily be in

the interest of the Government. The OPM also states that for some lower grade levels, it is not cost effective to pay for relocation.

However, OPM believes that any agency decision not to authorize reimbursement of relocation expenses should be clearly communicated in advance and in writing to all applicants, preferably by a statement on the vacancy announcement. In this way, employees who apply for a vacancy would understand that relocation expenses will not be paid.

The OPM concluded by expressing its belief that there is a valid distinction to be made between an agency's obligation to its own employees and those transferring from another agency. Since an agency has broad authority to direct the reassignment of its employees, OPM points out that the obligation to pay relocation costs is commensurately greater than for employees from another agency, over whom the agency exercises no authority or control.

VIEWS OF GENERAL SERVICES ADMINISTRATION

The Director of the Federal Travel Management Division, General Services Administration (GSA), expresses the view that merit promotion policies and practices should not be the controlling factor in determining whether a transfer is in the interest of the Government, nor should budget constraints be a controlling factor. The Director also expresses concern "with the ability of an employee to accept a transfer on the basis that no relocation allowances will be paid and then after the fact, claim and receive reimbursement."

Notwithstanding the above reservations, the Director does not object to our reconfirming the decision of September 2, 1980, in view of the present travel regulation provisions and our decisions interpreting these provisions. He is less concerned with the particular case than with the long-term impact of the decision. He recognizes that the current Federal Travel Regulations do not provide agencies with guidelines as to what factors should be considered in determining whether a transfer is in the interest of the Government. The Director, after

noting both the widespread interest in this matter and the increasing restrictions on travel funds, states that GSA will evaluate whether there is authority under the present statutory provisions to revise the Federal Travel Regulations to provide guidelines giving agencies discretion to recruit under merit promotion systems without the present requirement to pay relocation allowances.

DISCUSSION

We shall first discuss Mr. Platt's entitlement to relocation expenses and then discuss the general concerns expressed by the Commission, OPM, and GSA.

Mr. Platt's Entitlement to Relocation Expenses

We have been advised that the Commission on Civil Rights does not have any agency regulations on the subject of relocation expenses and merit promotion transfers, nor are we aware of any Commission policy that would require it to treat merit promotion transfers as having been accomplished for the convenience of the employee. We have examined the Commission's job vacancy announcement number 79-65, dated September 11, 1979, to which Mr. Platt responded. We find that the announcement contained no restrictions on the reimbursement of relocation expenses and no limitation on the geographic area of consideration. In fact, the announcement expressly stated that the area of consideration was to be both within and outside the agency. The announcement in question did not make any statement regarding differences in entitlement between the Commission's employees and other applicants. Additionally, the record shows that the Commission's decision not to reimburse Mr. Platt was made after the closing date of the vacancy announcement as a result of an Office of Management and Budget direction to agencies to cut back travel expenditures.

The record reveals that the first notice given to Mr. Platt of the Commission's intention not to reimburse came after the agency had selected him for the position. Even though Mr. Platt accepted the job offer with knowledge of the Commission's decision not to make relocation allowances available, he is not barred from claiming relocation expenses which he is otherwise legally entitled to receive. See James F. Hansard, B-201732,

June 30, 1981. We do not believe that the Commission's decision, made after the closing date of the vacancy announcement and without the employee's knowledge until after his selection, is a proper means of reducing travel costs. The Commission has not shown any proper basis to deny relocation expenses to Mr. Platt.

In the absence of guidance in the Federal Travel Regulations or in OPM regulations or the Federal Personnel Manual, and in the absence of agency regulations on the subject, we find that Mr. Platt's transfer was in the interest of the Government and he is entitled to the relocation expenses allowable under the Federal Travel Regulations.

General Considerations

In light of the general concerns expressed by the Commission, OPM, and GSA, we have reexamined the matter, and recognize that some misunderstanding exists with regard to our prior Platt decision. While we addressed the matter of merit promotion transfers in the absence of agency regulations in Platt, we did not deal with the question of how agencies may effectuate a policy of not authorizing reimbursement of relocation expenses pursuant to a merit promotion announcement when the totality of circumstances leads the agency to determine that any resulting transfer is not primarily in the interest of the Government.

Reimbursement of travel and relocation expenses upon an employee's change of station under 5 U.S.C. §§ 5724 and 5724a (1976) is conditioned upon a determination by the head of the agency concerned or his designee that the transfer is in the interest of the Government and is not primarily for the convenience or benefit of the employee or at his request. In this connection, para. 2-1.3, Federal Travel Regulations (FPMR 101-7) (May 1973), also provides that when a change of official station for permanent duty is authorized by the head of the agency concerned or his designee, transportation expenses and applicable allowances are payable provided that the transfer is in the interest of the Government and is not primarily for the convenience or benefit of the employee or at his request.

We have allowed relocation expenses on merit promotion transfers where an agency's own regulations provided that such transfers are in the Government's interest. Stephen P. Szarka, B-188048, November 30, 1977. Further, in Donald P. Fontanella, B-184251, July 30, 1975, we stated that if the agency recruits or requests an employee to transfer to a different location it will normally regard such transfer as being in the interest of the Government. Absent an agency policy to the contrary, our view, as stated in Platt, is that when an agency issues an announcement of an opening under its Merit Promotion Program such action is a recruitment action within the scope of Fontanella.

We are not, however, aware of any statute or regulation which would prohibit the General Services Administration, Office of Personnel Management, or the employing agency from issuing regulations concerning relocation expenses and merit promotions which would provide guidelines as to the conditions and factors to be considered in determining whether a particular transfer pursuant to a vacancy announcement would be in the interest of the Government for purposes of the reimbursement of relocation expenses.

Any regulation should state the specific conditions and factors which would be considered in making the determination in any particular case. These might include, but are not limited to, labor market conditions, and cost effectiveness. Additionally, any regulations issued in accordance with the guidance given above should require that such information be clearly communicated in advance and in writing to all applicants, preferably by a statement on the vacancy announcement. If this is done, each person who applies will do so with an understanding of the conditions under which relocation expenses will or will not be paid, and acceptance of an offer would be tantamount to accepting a condition of employment which the person could not successfully contest unless it was shown to be arbitrary or capricious, or contrary to the decisions of this Office.

Larry R. Van Cleave
For Comptroller General
of the United States